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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/579,023

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Alexander R. Roustaei

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7324

7590

10/04/2005

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EXAMINER

LE, THIEN MINH

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/579,023

Applicant(s)

ROUSTAEI ET AL.

Examiner

Thien M. Le

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2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

Applicant is noted that the application is not in compliance with 37 CFR 1.84 since it does not include drawings (copies or original). Applicant is also respectfully noted that transfer of the drawings from the patent file is not done by the Office.

Claim Objections

Claims 9, 17 and 34 have been improperly amended. Applicant is noted that 37 CFR 1.173 requires that the "numbering of patent claims preserved. Patent claims may not be renumbered. The numbering of any claim added in the reissue application must follow the number of the highest numbered patent claim."

Claim Rejections

Claims 1-46 are rejected under 35 U.S.C. 251 as being as lacking basis for reissue because by statute, a reissue application can only be granted for the unexpired portion of the term of the original patent. (see *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1983)). Since the patent term has expired due to nonpayment of maintenance fees, no reissue can be issued. To reinstate the original patent, a petition under 37 CFR 1.377 or 37 CFR 1.378 must be filed and granted.

Double Patenting

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 5,786,582 (herein after referred to as "the '582 patent"). Although the conflicting claims are not identical, they are not patentably distinct from each other because they essentially reciting the same limitations.

Claims 1, 16, and 31 are rejected in view of claim 1 of the '581 patent in that it recites:

1. An optical scanning device for reading a one- or two-dimensional symbology having a first width, said optical scanning device comprising:

at least one printed circuit board having a front edge with a second width;

a light source mounted on said at least one printed circuit board, said light source for projecting an incident beam of light onto said symbology, said incident beam of light having substantially said second width at said front edge of said at least one printed circuit board and a first height and a third width at said symbology, said third width being greater than said second width and at least as large as said first width;

an optical assembly comprising a plurality of lenses disposed on said at least one printed circuit board along an optical path for receiving and focusing light reflected from said framed symbology to obtain a focused light at a focal plane, said optical assembly having moving means for moving at least one of said plurality of lenses with respect to other lenses of said plurality to provide a variable field of view;

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at least one framing means disposed on said at least one printed circuit board for framing said symbology to identify an area to be scanned by said scanner, wherein said at least one framing means comprises at least one laser diode for emitting a laser beam and at least one diffractive optic for transforming said laser beam into a plurality of diverging beamlets, said diverging beamlets having a beamlet spacing at said symbology at least as large as said first width, wherein said at least one framing means comprises a first framing means and a second framing means, the first framing means corresponding to a wide field of view and the second framing means corresponding to a narrow field of view;

a detector disposed on said at least one printed circuit board within said optical path substantially at said focal plane of said optical assembly for detecting at least a portion of said focused light within said variable field of view of said detector, said variable field of view having said first height and said third width, said detector for sensing said focused light to obtain a sensed symbology;

a processor for processing said sensed symbology to obtain an electrical signal; and

an output means for converting said electrical signal into output data.

As can be seen, though the claimed language is not the same, they essentially reciting the same limitations. Thus, the patent protections have been granted to another application.

Allowable Subject Matter

Claims 2-15, 17-30, 32-46 are objected to as being dependent upon a rejected base claim, the rejections under 37 CFR 251 but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose an optical scanning device for reading 1D and 2D bar codes comprising the combinations of a plurality of lenses, a printed circuit board, a memory means, an optical framing locator, a monitor means, an image processing

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means, as recited collectively in claims 1, 16, and 31, and further having the functions and characteristics as recited in claims 2-15, 17-30, 32-46.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thien M. Le whose telephone number is (571) 272-2396. The examiner can normally be reached on Monday - Friday from 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Le, Thien Minh
Primary Examiner
Art Unit 2876
September 29, 2005**